terstate commerce at the time. This case was cited with approval by the Supreme Court in the Pedersen case.

In Illinois Central R'y *v.* Porter (207 Fed. 311, 125 C. C. A. 55) one engaged in carrying interstate freight from the freight house to the cars with a hand truck was held to be engaged in interstate commerce. A track walker repairing a switch in a terminal yard, used for interstate as well as intrastate traffic, was held, in Central R. R. *v.* Colasurdo (192 Fed. 901, 113 C. C. A. 379), to be employed in interstate commerce. One engaged in making repairs on an engine used for interstate commerce, after it had reached the end of the run, and placed on the fire track to await the time for the return trip to another state, was held in Baltimore & Ohio R. R. *v.* Darr (204 Fed. 751, 124 C. C. A. 565, 47 L. R. A., N. S., 4) to be engaged in interstate commerce. Telegraph operators receiving or transmitting dispatches affecting the movement of interstate trains have been held to be engaged in interstate commerce (Baltimore & Ohio R. R. *v.* Interstate Commerce Comm'n, 221 U. S. 612, 31 Sup. Ct. 621, 55 L. Ed. 878).

That the fireman in this instance had been detailed to watch the locomotive engine during the excess hours does not affect the result. This was expressly decided by this court in San Pedro, etc., R'y *v.* United States (supra) and Great Northern R'y *v.* United States (supra), where the facts were identical with those in this case.

The fact that this fireman was employed on a work train was wholly immaterial, if it was, in fact, an interstate train. The act of Congress makes no such exception, and the courts certainly are powerless to do so. The gist of the offense is that the carrier is engaged in the transportation of passengers or property by railroad from one state to another, and that the employee is actually engaged in or connected with the movement of any train. 'Any train' is certainly broad enough to include a work train.

As the agreed statement of facts shows that the employee was required to remain on duty over 20 hours; that the train on which he was employed had been brought from another state and had not yet reached its final destination; as the material was intended to be carried further; that the material was to be used in repairing the track, which was an interstate highway, the employee was, at the time, engaged in interstate commerce in connection with the movement of an interstate train. The judgment of the court below (the action being by the United States against the plaintiff in error to recover penalties for violation of the act) was right, and is affirmed."

Interstate Commerce—Railway Appliances—Intrastate Employee.—There has been some criticism of the decision of the Supreme Court of the United States in the case of Texas & Pacific Ry. Co. *v.* Rigsby, 36 Sup. Ct. 482, holding that an employee of an interstate

railway company may recover for injuries occasioned by an insecure appliance, whether such employee be engaged in intrastate commerce or not. We can see no good reason for this criticism, if it be conceded that the statute in question was within the constitutional powers of Congress, and that, of course, was long ago decided by the Supreme Court. If the railway company was under the law bound to install appliances of a certain character, any one injured by reason of its failure to do so was entitled to recover for those injuries, whether he was engaged in interstate commerce or not. In other words, the liability of the railway company does not flow from any right given to the employee because of his employment in interstate commerce, but upon a duty laid on the employer by reason of its engagement in interstate commerce.

Of course, the act in question, like so many other acts based on the commerce clause of the constitution, finds no real justification in that clause. The obvious intention of the makers of the Constitution was to prevent the States from establishing tariffs and other vexatious restrictions on the commerce of their neighbors. If they had been left at liberty to do this, there would have been endless trouble, leading, perhaps, to armed conflicts,—for disrupted trade has ever been the fertile mother of wars. Even worse would have been the condition of things when interior states, having no seaboard, were established, as was certain to be the case. The trade of Ohio, for instance, with her sister States could have been utterly cut off by Virginia and Pennsylvania imposing tariffs or transit dues on that trade. If any other construction had been given to the clause in the early days of the Republic, when the men who framed it were still alive, we imagine that it would have received short shrift. If, for instance, the Congress had attempted to prescribe the size of the wheels of wagons engaged in interstate commerce, or the number of oxen used in moving them, the act would have been laughed out of the courts. But when this sort of legislation was enacted nearly a century after the adoption of the Constitution, the commerce clause had developed in size like the Djin in the Bottle of the Arabian Nights, and the federal courts were able, without any qualms of conscience, to uphold the power of the government to prescribe the kind of vehicle in which interstate commerce should be carried on.—The National Corporation Reporter.

Labor—Equality in Labor Controversies.—In Bogni *v.* Perotti, 112 N. E. 853, which was a controversy between rival labor organizations, whose members were seeking similar employment in the building trades, the facts are stated as follows in the opinion: "The plaintiffs are members of the General Laborers' Industrial Union No. 324, a voluntary unincorporated association, which is a branch of the national organization known as the Industrial Workers of the World.